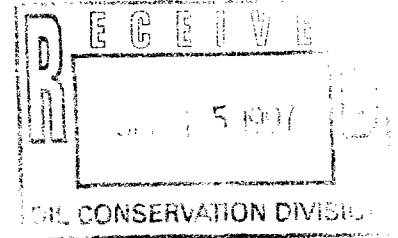


STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:

APPLICATION OF ODESSA OIL  
INVESTMENTS, INC. FOR  
SALT WATER DISPOSAL,  
EDDY COUNTY, NEW MEXICO.

CASE 11839



YATES PETROLEUM CORPORATION'S  
REPLY IN SUPPORT OF ITS MOTION TO DISMISS

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YATES PETROLEUM CORPORATION, ("Yates") submits this Reply in Support of its Motion to Dismiss the application of Odessa Oil Investments, Inc. ("Odessa") for authorization to re-enter and convert the Lakewood State Com Well No. 1 ("Lakewood well") to an injection well.

Odessa owns no interest in the acreage which is the subject of this application. At the September 4, 1997, Examiner hearing, Odessa admitted that it owned no mineral interest in Section 30, Township 19 South, Range 26 East, NMPM, Eddy County, New Mexico. Odessa also admitted that it had not obtained a surface lease on this acreage from the State Land Office. Odessa owns no interest in the subject acreage and, therefore, lacks standing

to bring this application to the Division.<sup>1</sup>

Yates is the lessee of State of New Mexico Oil and Gas Lease VO05110 000 which covers the lands on which the Lakewood well is located. As such it has the exclusive right to use this acreage for the production of oil and gas and has standing to seek dismissal of the application of Odessa.

The general law on this issue permits a surface owner only the right to use the surface in a manner which does not interfere with the reasonable use of the subsurface in the development of oil and gas by the lessee. When the rights of the surface owner and the mineral owner to use of the surface are in conflict, the mineral estate is the dominant estate and the rights of the mineral owner prevail. See 1 H.Williams & C. Meyers, Oil and Gas Law, at Sec 218.6, 223-224 (1996). Here, Yates' intention to reenter the Lakewood well and attempt to return it to production, will reduce costs and surface disturbance and is a reasonable use of the surface.

Odessa, however, disputes Yates' exclusive right to reenter the this well and attempt

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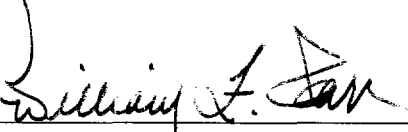
While Odessa argues that the wellbore of the Lakewood well has become the property of the State of New Mexico, it cannot show that it has any interest in or right to use this wellbore. However, State Oil and Gas Lease VO5110 grants to Yates Petroleum Corporation: “exclusively, for the sole and only purpose of exploration, development and production of oil and gas (including carbon dioxide and helium), or both thereon and therefrom ... and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas....”

to return it to production. In so doing it cites *Penroc Oil Corp.*, 84 IBLA 36 in support of its position that a lessee's right to use a wellbore is limited to wells it drilled. This is too narrow a reading of this case. *Penroc* is consistent with the general law and provides only that the Bureau of Land Management may not grant to a party, other than to the oil and gas lessee, a right-of-way to dispose of salt water by pumping it into the lessee's plugged oil and gas located on producing leased lands.

The decision of the Tenth Circuit in *Gutierrez v. Davis*, 618 F.2d 700 (10th Cir. 1980) remains the controlling authority on this issue. It provides that absent express language to the contrary, an oil and gas lease gives the lessee "the right to drill through any part of the real estate including the plug and casing of the abandoned well when, as here, it was reasonable use within the stated purpose." The purpose of this lease is the production of oil and gas and Yates has the exclusive right to use this wellbore. Odessa's application should be dismissed.

Respectfully submitted,

CAMPBELL, CARR, BERGE  
& SHERIDAN, P.A.

By: 

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ATTORNEYS FOR YATES  
PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was hand delivered this \_\_\_\_ day of September, 1997, to James Bruce, Esq., attorney for Odessa Oil Investments, Inc., 612 Old Santa Fe Trail, Suite B, Santa Fe, New Mexico 87501 and Rand Carroll, Esq., Attorney for the Oil Conservation Division, 2040 South Pacheco Street, Santa Fe, New Mexico 87505.

  
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WILLIAM F. CARR